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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,800	12/28/2001	Sudhindra P. Herle	2002.02.002.WTO	2037
Docket Clerk P.O. Drawer 800889 Dallas, TX 75380			EXAMINER PITARO, RYAN F	
			ART UNIT 2174	PAPER NUMBER
			MAIL DATE 08/21/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: SUDHINDRA P. HERLE and MARK MITCHELL

Application No. 10/035,800
Technology Center 2100

Mailed: August 20, 2008

Before KRISTA ZELE *Deputy Chief Appeals Administrator*
ZELE, *Deputy Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on April 9, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

**EXAMINER'S ANSWER, INCONSISTENCIES WITH THE
BRIEF AND/OR LAST REJECTION OF RECORD**

A review of the file finds inconsistencies between the last rejection of record and the Grounds of Rejection sections in the Appeal Brief and the examiner's answer as set forth below.

Final Rejection

A review of the Final Rejection mailed on October 17, 2006, finds that claims 1, 2, 5-9, 12-15 and 17-22 as being rejected and pending. However, in the detailed action, the single statement of rejection refers only to "[c]laims 1-16." It is noted that the amendment submitted on July 25, 2006 amended claims 1, 8 and 15, cancelled claims 3, 4, 10, 11 and 16 and added new claims 17-22.

Appeal Brief

A review of the Appeal Brief filed on May 8, 2007, indicates "[c]laims 1, 2, 5-9, 12-15 and 17-22" as the single grounds of rejection to be reviewed on appeal.

Examiner's Answer

A review of the Examiner's Answer mailed on August 22, 2007, indicates "[c]laims 1-16" as the single grounds of rejection.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- (1) review the above inconsistencies to determine how to clarify the record;
- (2) vacate the Examiner's Answer mailed on August 22, 2007, and
- (3) issue a corrected Examiner's Answer to correct the above inconsistencies and to correct other sections of the Answer as may be required;
- (4) to include the necessary approval from the TC Director or designee in accordance with MPEP 1207.05, part (B) as may be required for any new grounds of rejection;
- (5) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/SJB

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